STATE OF MICHIGAN

COURT OF APPEALS

NADINE MAE CHAMBERS, Plaintiff-Appellee,	UNPUBLISHED May 29, 2014
v	Nos. 293640; 298229; 298834 Lapeer Circuit Court
MERLE K. CHAMBERS, Defendant-Appellant.	LC No. 91-016435-DO

Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

In these consolidated appeals, defendant contends that the trial court misapplied the law and abused its discretion in ordering him to partially reimburse plaintiff for her attorney fees in defending against defendant's two most recent post-judgment petitions to modify or terminate spousal support, seeking enforcement of the trial court's orders for spousal support and attorney fees, and responding to defendant's numerous motions and appeals of the trial court's orders. Because the trial court did not misapply the law permitting it to award attorney fees in the circumstances presented in these appeals or abuse its discretion, we affirm.

I. FACTS AND PROCEEDINGS

The parties married in 1955 and were divorced in 1993. After his retirement from the United States Air Force, defendant worked as a salesman for his family's business, the M. K. Chambers Company. Plaintiff did not work outside the home. The parties had two adult children when they divorced. According to plaintiff's 1993 trial brief that defendant submitted as a source of historical information regarding the divorce, defendant's extra-marital affairs were the cause of the breakdown of the marital relationship. The parties agreed to a property settlement, and a consent judgment of divorce was entered on April 14, 1993.

Defendant was awarded his partnership interest in Chambers Enterprises and Chalock Enterprises. Defendant and his three siblings would subsequently acquire from their mother an equal interest in the M. K. Chambers Company. The divorce judgment also provided for a qualified domestic relations order (QDRO) giving plaintiff 50% of defendant's Air Force pension. With respect to alimony, the judgment provided:

> IT IS FURTHER ORDERED AND ADJUDGED that NADINE CHAMBERS is entitled to alimony and MERLE CHAMBERS is ordered to pay

to NADINE CHAMBERS through the office of the Friend of the Court of this county Four Hundred Dollars ($400.00) per week as a permanent alimony.

In 2005, defendant moved to modify spousal support. After conducting a hearing, the trial court entered an order on August 19, 2005, amending the judgment of divorce to provide that defendant pay "permanent spousal support in the amount of $1,500 per month, effective as of October 6, 2004." The court's ruling was based solely on defendant's income from wages or salary. The trial court did not consider defendant's income from his Air Force pension, his social security retirement benefits, or his ownership interests in the family business entities.

In 2008, defendant began the present proceedings that resulted in the orders at issue in these appeals. On February 29, 2008, defendant again moved to modify or terminate spousal support. This petition alleged that defendant had retired and "has no earned income." Defendant further alleged that he only received $35,563.00 in social security and other retirement benefits. Defendant asserted he could no longer afford to pay spousal support and that plaintiff's "financial situation has improved due to her cohabitation with a male companion."

Plaintiff filed a motion for defendant to pay interim attorney fees to permit her to defend against plaintiff's motion to modify or terminate spousal support. Plaintiff supported her motion with an affidavit that her gross monthly income was $2,803 and her monthly expenses $2,940. Plaintiff also alleged, on information and belief, that defendant had recently sold his interest in the family companies for "a very large sum," which at the hearing was alleged to be in excess of $500,000. The trial court granted the motion for interim attorney fees in the amount of $3,500. An order was entered on April 3, 2008, which defendant appealed to this Court in Docket No. 284900. This order appears in the trial court record toward the bottom of the first of five files that comprise the record on appeal in this case.

While defendant's appeal of the April 3, 2008 interim attorney fee order was pending, the trial court set a period of time for discovery and scheduled an evidentiary hearing on defendant's motion to modify or terminate spousal support. The evidentiary hearing occurred on September 26, 2008. Evidence disclosed that defendant's interest in the various family companies was redeemed in October 2007. Defendant received four promissory notes in the amounts of $50,000, $227,000, $182,000, and $352,000, for a total face value $811,000. The $50,000 note was payable in five annual installments of $10,000 plus interest. The other notes were payable in monthly installments over ten years. The notes paid interest at 7% per annum compounded monthly and were signed on behalf of the pertinent business entities by defendant's brother, Gerald Chambers, as president of the entities. At the time of the hearing, Gerald and defendant's other brother, Robert Chambers, each owned a 50% interest in the various companies, having purchased their sister's interest. All the notes prohibit either party from assigning its interest in the notes "without first obtaining the written consent of the other party." During the evidentiary hearing, defendant's attorney, while making an argument that defendant's current spouse, Sandra, had contributed to the post-divorce growth of defendant's assets, stated, "We could simply assign [the] promissory notes over to [Sandra] as a fiction and say, okay, now [defendant's] assigned, and gift[ed] all his interest in his promissory notes over to his wife and he doesn't have any assets. We're not going play that game with the Court."

The evidence at the hearing also showed that defendant had a written 24-month employment contract, beginning 10/01/2007, with the M. K. Chambers Company. This contract established defendant's annual salary as $41,000 and provided that defendant's "salary will not be subject to change."

Based on the evidence submitted at the hearing, and the briefs of the parties, the trial court issued a written opinion on April 27, 2009, denying defendant's motion to modify or terminate spousal support and also denying plaintiff's oral request during the hearing for an increase in support. The trial court agreed with defendant that his share of his Air Force pension benefits, which had already been divided in the judgment of divorce, should not be considered in determining defendant's ability to pay alimony. But the court determined that the interest on the promissory notes was income to defendant for the purpose of assessing his ability to pay spousal support. Based on ten-year income averaging, the trial court determined defendant received $29,279.80 in average annual interest on three of his four promissory notes. Thus, together with his Social Security benefits, the court determined defendant's annual income, without considering his Air Force pension, was $97,845.

With regard to defendant's allegation that plaintiff was living with a man, the trial court found that the 78-year-old gentleman was similar to a college roommate who paid plaintiff rent of $760 a month. The trial court found that plaintiff's annual income was $19,128, without her portion of defendant's Air Force pension and alimony payments, and consisted of $10,008 in Social Security benefits and $9,120 of rent from her roommate.

Based on these findings, the trial court determined there had been no significant change of circumstances justifying a modification of defendant's spousal support obligation, either up or down. Before a formal order was even entered, defendant filed a motion for reconsideration on May 12, 2009. The motion included the May 5, 2009 affidavit of Gerald Chambers, who averred that defendant's salary was reduced from $41,000 to $29,890 as part of a company-wide response to "economic hardship[.]" No date was given when this purported wage reduction occurred. Gerald also stated that certain of the promissory notes to defendant "were assigned to Sandra Chambers by appropriate company consent." The affidavit further stated that payments on the notes "are paid directly to Sandra Chambers." Further, Gerald asserted that the notes had been modified, without stating specifics, "to reduce the monthly payments on them."

The trial court entered an order May 18, 2009 in accordance with its April 27, 2009 opinion. The order also denied plaintiff's request that defendant reinstated a life insurance policy with plaintiff as the beneficiary, an obligation in the judgment of divorce of which the court had relieved defendant in the 2005 modification. The order further reserved ruling on plaintiff's request for additional attorney fees pending this Court's decision in Docket No. 284900. On June 9, 2009, the trial court denied defendant's motion for reconsideration. This Court denied each party's application for leave to appeal the May 18, 2009 order "for lack of merit in the grounds presented." *Chambers v Chambers*, unpublished order of the Court of Appeals, entered November 6, 2009 (Docket Nos. 293422 & 29377). Our Supreme Court denied defendant's application for leave to appeal to that Court. (Docket No. 140231; April 27, 2010).

On May 21, 2009, this Court affirmed the trial court's order that defendant pay plaintiff $3,500 as an interim attorney fee. *Chambers v Chambers*, unpublished opinion per curiam of the Court of Appeals, issued May 21, 2009 (Docket No. 284900). The Court opined:

> The trial court did not grant attorney fees outright, but indicated an interim payment was required subject to modification once evidence was acquired and presented. Thus, to ultimately be entitled to the fees, the proofs would have to continue to show that plaintiff was "unable to bear the expense of the action," and that defendant is "able to pay." Since defendant did not dispute that he had recently been paid approximately $500,000 for his interest in a business, it does not appear that he would be unable to temporarily provide $3,500 until the proofs were available. Under these circumstances, we find no abuse of discretion. [*Id*., slip op at 2.]

On June 29, 2009, the trial court held a hearing on plaintiff's motion for additional attorney fees. Plaintiff argued that an order requiring defendant to partially pay her attorney fees was justified based on the disparity of the parities' income and assets. Defendant argued plaintiff could afford to pay her own attorney fees because she had roughly $120,000 in savings and acknowledged at the September 2008 evidentiary hearing that she could pay her attorney if required to do so. Plaintiff countered that she should not be required to use her lifetime savings to defend an action initiated by defendant that was unwarranted. Defendant also argued his income had been reduced since the evidentiary hearing for the reasons set forth in Gerald Chamber's affidavit. Defendant's attorney asserted that defendant's transfer of assets to his present spouse was for estate planning purposes. Defendant also asserted in his written response that some of the plaintiff's attorney fees were unnecessary, such as those caused when plaintiff would not stipulate to an abbreviated record for defendant's appeal of the interim attorney fee order. Otherwise, defendant presented no argument at the hearing regarding the necessity or reasonableness of plaintiff's attorney fees, which were supported by affidavit.

In ruling on plaintiff's motion from the bench, the trial court noted that it had found defendant's motion to modify spousal support "unpersuasive" and that plaintiff had supported her request for $19,495.19 in fees and costs defending against it. The court also noted the lack of argument regarding the necessity or the reasonableness of the fees plaintiff's counsel charged. Rather, defendant's argument was that plaintiff could afford to pay her own attorney fees and defendant could not. The trial court determined "based upon the relative positions of the income of the parties, the fact that the Court found that the petition filed by the Defendant was unpersuasive, . . . the Court will grant Plaintiff attorney fees in the amount of $8,672." The court clarified this was in addition to the $3,500 previously ordered. A subsequent hearing was necessary on August 10, 2009 to enter the order, which defendant appeals in Docket No. 293640.

Two months later, on October 16, 2009, defendant filed yet another motion to terminate spousal support. This motion alleged circumstances that existed at the time of the 1993 divorce judgment and contained many the same allegations that were presented in defendant's February 29, 2008 motion. For example, the new motion alleged that defendant retired on October 1, 2009, and "has no earned income." Defendant also alleged he only received social security and other Air Force retirement benefits for a total annual income of $35,563, and that he would suffer

hardship paying spousal support out of this income. Defendant alleged plaintiff could replace spousal support with social security benefits and her share of his Air Force pension.

Plaintiff filed a motion to dismiss the defendant's motion on the basis that it did not allege a change in circumstances since the proceedings on defendant's February 2008 motion. At a hearing on this motion on November 2, 2009, the trial court agreed with plaintiff. The court noted that defendant had "not stated anything different in the new motion than in the motion that was filed back in February of 2008" on which the court had "already ruled on in its opinion of April of 2009." Therefore, the trial court granted plaintiff's motion to dismiss. At the same hearing, the trial court ruled that defendant's new motion was frivolous under MCL 600.2591(3)(a), finding that defendant "sought to harass, embarrass, or injure the Plaintiff by filing this current motion." The trial court's November 30, 2009 order provided in paragraph one that defendant's motion to terminate spousal support was dismissed because it did not allege a change in circumstances since the court's previous order. Defendant's application for leave to appeal to this Court the dismissal of his motion to terminate spousal support was denied "for lack of merit in the grounds presented." *Chambers v Chambers*, unpublished order of the Court of Appeals, entered December 1, 2010 (Docket No. 298963).

The November 30, 2009 order also provided in paragraph two that defendant was ordered to pay $1,500 as a sanction because the October 2009 motion was frivolous. Because of some confusion in the trial court, an order denying defendant's timely motion for reconsideration of the November 30, 2009 order was not entered until June 8, 2010. Defendant filed his appeal of the order for sanctions on June 24, 2010 in Docket No. 298834.

While his various appeals in this Court were pending, defendant stopped paying spousal support and did not comply with the trial court's orders regarding plaintiff's attorney fees. On plaintiff's motion, the trial court held a show cause hearing on November 9, 2009 regarding defendant's failure to pay attorney fees and one on November 30, 2009 regarding defendant's failure to pay spousal support. As a result of the first hearing, the trial court ordered defendant to pay plaintiff's attorney previously ordered fees of $8,672.00, or post the same amount with the county clerk as a stay bond pending the outcome of defendant's appeal. Defendant applied for leave to appeal this November 19, 2009 order, which this Court denied "for lack of merit in the grounds presented." *Chambers v Chambers*, unpublished order of the Court of Appeals, entered April 2, 2010 (Docket No. 295465). As a result of the second hearing, the trial court entered an order on December 11, 2009 that defendant pay all spousal support due on or before January 19, 2010, or report to the county jail to serve 30 days for failure to comply with the order. The order, however, was subsequently stayed by a stipulated order entered January 28, 2010, requiring defendant to post a $10,000 appeal bond, which defendant immediately posted. Defendant's application for leave to appeal the December 11, 2009 order was subsequently denied "for lack of merit in the grounds presented." *Chambers v Chambers*, unpublished order of the Court of Appeals, entered March 12, 2010 (Docket No. 295786).

On January 5, 2010, plaintiff filed a motion for additional attorney fees based on the continued litigation, including defendant's failure to comply with the court's orders and need to respond to defendant's repeated appeals. The trial court held a hearing on the motion on February 3, 2010, and entered an order that defendant to pay plaintiff additional attorney fees of $5,000. This order also provided that it was an interim determination that could be adjusted on

further motion and supporting evidence. Thereafter, plaintiff's attorney filed, on February 8, 2010, a motion for additional attorney fees supported by an affidavit stating plaintiff had incurred nearly $19,000 in fees and costs from May 5, 2009 to January 26, 2010. In response, defendant admitted he had transferred his interest in the promissory notes to his present spouse, that all his assets were held jointly with his current spouse or otherwise in retirement accounts not subject to process. Defendant averred in an affidavit his only income was his social security benefit, his Air Force pension, and required minimum distributions from his retirement accounts. In a later affidavit, defendant stated his belief that the parties intended at the time of their divorce that defendant's obligation to pay spousal support would terminate when he retired.

The trial court held a further hearing on plaintiff's motion for additional attorney fees on April 26, 2010. Defendant argued at the hearing only that plaintiff had not satisfied her burden of showing that she could not pay her own attorney fees and that defendant could. The trial court ruled in plaintiff's favor, stating its reasoning as follows:

> This Court has continually had this case before it, it seems like since 2008 until the present. This Court has bent over backwards in trying to render its opinion in regard to this transfer of assets. The Court took a great deal of time in writing an opinion in regard to that. Again, counsel can disagree, but in the meantime the court orders things to be done and none of those things seem to be done. No matter what the Court orders, none of those things seem to be done by the Defendant in this particular matter.
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> Clearly, if the Court is wrong, the Court is wrong. Have somebody tell the Court the Court made a mistake. That hasn't happened so far. And, again, I do appreciate the argument is, "Once we pay, we're never going to see it again." That may or may not be so. The Court doesn't know what's going to happen. But at this point in time the Plaintiff in this matter isn't getting the money that the Court ordered that she get nor getting any of the attorney fees that the Court ordered she get before.
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> The Court, at this point in time, again and I'm going to use the word interim because it doesn't seem like there is a light at the end of the tunnel in this litigation. The Court will order an additional $10,000 in interim attorney fees to be paid by the Defendant to the Plaintiff in this matter.

At the conclusion of the May 4, 2010 hearing, the trial court entered an order requiring that defendant pay plaintiff $10,000 for her attorney fees and costs, in addition to the $5,000 attorney fees ordered on February 3, 2010. Defendant has appealed this order in Docket No. 298229.[1]

[1] Defendant also attempted to appeal a subsequent order of October 22, 2010, directing that defendant either pay the attorney fee award of $15,000, or post an appeal bond for that amount, or face jail time or house arrest. This Court denied the application "for lack of merit in the

II. STANDARD OF REVIEW

This Court reviews a trial court's decision whether to award attorney fees for an abuse of discretion and the trial court's underlying factual findings of fact for clear error. *Loutts v Loutts*, 298 Mich App 21, 24; 826 NW2d 152 (2012). A trial court's findings of fact are not clearly erroneous unless the appellate court is left with the definite and firm conviction that a mistake has been made. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). "The trial court abuses its discretion when its decision results in an outcome that falls outside the range of reasonable and principled outcomes." *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011).

A trial court's finding that an action or defense is frivolous under MCR 2.625(A)(2) is reviewed for clear error. *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 438-439; 830 NW2d 785 (2013). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

Questions of law on appeal are reviewed de novo. *Loutts*, 298 Mich App at 24. This includes the interpretation and application of court rules. *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 598; 552 NW2d 523 (1996).

III. ANALYSIS

A. DOCKET 293640

In this appeal, defendant challenges the trial court's August 10, 2009 order that he partially reimburse plaintiff $8,672 for her attorney fees in defending against defendant's unsuccessful 2008 motion to terminate or modify spousal support. Defendant argues the trial court misapplied MCR 3.206(C)(2) by not requiring plaintiff to prove that she could not pay her own attorney fees and also prove that defendant could pay them. In this regard, defendant asserts the trial court erred in relying on evidence from the September 2008 evidentiary hearing and not considering new evidence defendant submitted regarding his transfer of promissory notes to his current spouse. Finally, defendant argues the trial court abused its discretion by not conducting a hearing regarding the reasonableness of plaintiff's claims regarding attorney fees. We find all these arguments unavailing and affirm the trial court.

MCR 3.206(C), which governs attorney fees and expenses in domestic relations actions, provides in pertinent part:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

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grounds presented." *Chambers v Chambers*, unpublished order of the Court of Appeals, entered November 10, 2010 (Docket No. 300949).

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay . . . .

This court rule permits an award of attorney fees only as necessary to permit the other party to prosecute or defend a domestic relations action. *Loutts*, 298 Mich App at 24. The court rule patently applies not only to an initial action but also to "a post-judgment proceeding." Defendant correctly argues that plaintiff has the burden of showing "both financial need and the ability of [defendant] to pay, as well as the amount of the claimed fees and their reasonableness." *Ewald*, 292 Mich App at 725 (citations omitted). Here, there was record evidence supporting the trial court's implicit and explicit findings in plaintiff's favor on all four of these elements. We are not left the definite and firm conviction that a mistake has been made. *Reed*, 265 Mich App at 150. Consequently, we conclude that the trial court's order for attorney fees in Docket No. 293640 was not an abuse of discretion. *Ewald*, 292 Mich App at 724-725.

The trial court implicitly found plaintiff's need for financial assistance and defendant's ability to pay "based upon the relative positions of the income of the parties." These findings are supported by evidence that showed plaintiff's monthly income was roughly equal to her expenses. Without considering the shared Air Force pension, defendant's annual income was five times that of plaintiff: $97,845 versus $19,128. Further, without considering either parties' home equity, assets available to defendant were nearly tenfold that available to plaintiff. This evidence supports the trial court's finding that plaintiff had financial necessity and that defendant had the financial ability to assist in paying her attorney fees. *Ewald*, 292 Mich App at 725.

Defendant's arguments to the contrary are without merit. Defendant argues that the trial court erred by utilizing evidence from the September 2008 evidentiary hearing in making its determination regarding attorney fees. We disagree. Just as an evaluation of defendant's motion for modification of spousal support required "an evaluation of the circumstances as they exist at the time modification is sought," *Laffin v Laffin*, 280 Mich App 513, 519; 760 NW2d 738 (2008), so too the pertinent timeframe for determining the parties' respective financial ability regarding their financial ability to afford attorney fees to prosecute or defend such action is at the time the proceedings are pending. Consequently, evidence presented at the modification evidentiary hearing was extremely relevant to the determination regarding attorney fees. Defendant's post-hearing efforts to voluntarily limit his income with cooperation of the family business through his brothers and to shield his assets from legal process does not render the trial court's findings regarding the respective financial ability of the parties to afford attorney fees clearly erroneous. Furthermore, there was no showing that defendant's machinations rendered the assets and the income from the assets unavailable to defendant.

Similarly, defendant's argument that the trial court erred by failing to conduct a hearing regarding the necessity and reasonableness of plaintiff's attorney fees is equally without merit. "When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services." *Reed*, 265 Mich App at 166. In this case, defendant presented no evidence to contest plaintiff's counsel's affidavit regarding both the necessity and the reasonableness of his fees.

And, defendant presented no argument at all on the necessity and reasonableness of plaintiff's attorney fees at the hearing on plaintiff's motion. Consequently, we are not left the definite and firm conviction that a mistake has been as to the trial court's implicit finding that plaintiff's attorney fees were both necessary and reasonable. *Id*. at 150; *Ewald*, 292 Mich App at 725.

Finally, defendant argues that the trial court erred because the evidence disclosed plaintiff had assets from which she could have paid her own attorney fees. Furthermore, defendant argues that plaintiff acknowledged at the evidentiary hearing that she could have paid her attorney fees. While the record disclosed that plaintiff had some savings from which to pay her attorney, it is settled that "[a] party may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support." *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). The record supports applying this rule in this case.

For all of the foregoing reasons, we conclude that the trial court did not abuse its discretion by entering the August 10, 2009 order that defendant partially reimburse plaintiff for her attorney fees. *Loutts*, 298 Mich App at 24; *Ewald*, 292 Mich App at 725. Consequently, we affirm in Docket No. 293640.

B. DOCKET 298834

In this appeal, defendant argues that the trial court erred by finding his October 2009 motion to terminate spousal support was frivolous under MCL 600.2591(3)(a), and ordering defendant to pay as a sanction an attorney fee for plaintiff of $1,500. Because we are not left with a definite and firm conviction that a mistake has been made, *Kitchen*, 465 Mich at 661-662, we conclude that the trial court's finding was not clearly erroneous. We therefore affirm.

MCR 2.625(A)(2) provides in pertinent part that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." Here, in finding that defendant's October 2009 motion to terminate spousal support was frivolous, the trial court found that MCL 600.2591(3)(a)(i) applied. That provision defines "frivolous" as meaning, "The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party." Here, the trial court determined that the October 2009 motion did not allege anything different from what was raised in the February 2008, and concluded that by filing the new motion, defendant "sought to harass, embarrass, or injure" plaintiff. As noted already, the trial court's finding is reviewed for clear error "because whether a party's claim is frivolous in a specific case is a question of fact." *Pontiac Country Club*, 299 Mich App at 438-439.

This Court has held in the context of both criminal cases and in civil cases that where an actor's intent is at issue it may be proved by circumstantial evidence. See *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008) (Because of the difficulty of proving an actor's state of mind on matters such as knowledge and intent, "minimal circumstantial evidence will suffice to establish an actor's state of mind, which can be inferred from all the evidence presented."); *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004) (the state of one's mind, including intent, motivation, or knowledge can be proven by circumstantial evidence). Moreover, circumstantial evidence may be superior to direct evidence of an actor's state of mind. See *Guardian Industries Corp v Dep't of Treasury*, 243 Mich App 244, 255; 621 NW2d 450

(2000)("[T]he most probative evidence of intent consists of objective evidence of what actually happened rather than descriptive evidence of the subjective state of mind of the actor."); See also *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 12; 596 NW2d 620 (1999).

In this case, the objective circumstances support the trial court's factual finding that defendant's intent in filing the October 2009 motion to terminate spousal support was frivolous because his primary purpose was to harass or injure plaintiff. The proceedings regarding defendant's February 2008 motion had only been concluded in the trial court two months previously with the entry of an order for attorney fees, which defendant insisted plaintiff pay from her own comparatively meager savings. Defendant's appeal of the merits of the trial court's denial of the earlier motion to modify was still pending in this Court. And, the trial court found that the October 2009 motion alleged substantially the same circumstances as were alleged in the February 2008 motion and which had been the subject of an evidentiary hearing and extended hearings before the trial court. These objective circumstances would warrant a finding that defendant in filing the new motion alleging matters already decided and pending appeal was for the primary purpose to harass or injure plaintiff by having her exhaust her savings defending repeated actions in the trial court and responding to repeated appeals.

Defendant's own statements of his intention only reinforce the conclusion that the trial court did not clearly err in finding that the October 2009 motion to terminate spousal support was frivolous. Defendant states in his brief on appeal that his "sole and primary purpose in filing his petitions has been to protect the property that he and his current wife have accumulated over the last 17 years of their marriage, which they intend to use to support themselves in their retirement." In other words, his repeated motions to modify are motivated not by hardship in complying with the judgment for spousal support but to keep all his property and income for himself and his current spouse. Defendant's fulfillment of his desire would of necessity injure plaintiff. Despite defendant's contention regarding his "sole and primary purpose," he states another motivation for his actions. Specifically, defendant asserts that he "has acted under . . . his belief that the parties intended alimony to cease or be substantially reduced upon his retirement." Defendant's belief is unsupported by the clear and unambiguous language in the judgment of divorce that ordered him to pay "*permanent* alimony." The 2005 modification of the judgment provided that defendant pay "*permanent* spousal support in the amount of $1,500 per month." Yet, despite this plain language, defendant persists in pursuing a very lengthy, scorched-earth legal crusade seeking to implement his purported unilateral belief that his spousal support obligation should end at his retirement. Thus, defendant confirms his intent to conform the judgment to his unsupported belief, which would have the effect of injuring plaintiff by limiting her support and depleting her savings in endless litigation.

In sum, we are not left with a definite and firm conviction that a mistake has been made, *Kitchen*, 465 Mich at 661-662, and therefore conclude that the trial court's finding was not clearly erroneous, *Pontiac Country Club*, 299 Mich App at 438-439. We affirm.

C. DOCKET 298834

In this appeal, defendant argues that the trial court erred entering its May 4, 2010 order that defendant pay plaintiff an additional $10,000 as partial reimbursement for attorney fees she incurred in this seemingly endless litigation. Defendant presents the same arguments that he

made with respect to Docket No. 293640 that the trial court misapplied MCR 3.206(C)(2) by not requiring plaintiff to prove that she could not pay her own attorney fees and also prove that defendant could pay them. Further, defendant argues that the trial court abused its discretion by not conducting a hearing regarding the reasonableness of plaintiff's claims regarding attorney fees. To the extent that the trial court relied on MCR 3.206(C)(2)(a), which authorizes an order of attorney fees in a domestic relations case when "the party is unable to bear the expense of the action, and that the other party is able to pay," we reject defendant's arguments for the same reasons discussed in Part A.

In addition, we read the trial court's ruling, despite the court's solicitous understanding of defendant's position, as finding that at least part of the additional attorney fees plaintiff incurred was because of defendant's refusal to comply with the trial court's orders. MCR 3.206(C)(2)(b) permits the trial court to award attorney fees in a domestic relations case when "the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply." The record supports the application of this court rule to at least part of the attorney fees plaintiff incurred.

In conclusion, we find that the trial court did not abuse its discretion by entering its May 4, 2010 order that defendant pay plaintiff an additional $10,000 as partial reimbursement for attorney fees. *Loutts*, 298 Mich App at 24; *Ewald*, 292 Mich App at 725. Consequently, we affirm in Docket No. 298229.

IV. SUMMARY

For the reasons discussed above, we conclude that the trial court did not commit an error law, did not clearly err in its fact finding, and did not abuse its discretion entering the three orders for attorney fees at issue in these appeals. We affirm in Docket Nos. 293640, 298229, and 298834. As the prevailing party, plaintiff may tax costs under MCR 7.219.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kurtis T. Wilder